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Targeted Economic Sanctions in Light of the Hong Kong Autonomy Act and U.S.-China Tensions

I. INTRODUCTION

Throughout the twenty-first century, the United States has popularized the use of targeted economic sanctions to encourage foreign governments and financial institutions to further U.S. foreign policy goals.¹ Compared to traditional sanctions, targeted sanctions intend to limit humanitarian costs and third country impacts by holding individual leaders and political elites accountable for intolerable or uncooperative behaviors.² Thus, as trade tensions with China have intensified over the past few years, with China's passing of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region³ ("HKSAR Security Law") on June 30, 2020, the use of targeted sanctions was a natural response.⁴ China's implementation of the HKSAR Security Law is seen as a direct violation⁵ of the 1985 Joint Declaration of the Government of the United Kingdom

1. See Elizabeth Rosenberg et al., *The New Tools of Economic Warfare: Effects and Effectiveness of Contemporary U.S. Financial Sanctions*, CTR. FOR A NEW AM. SEC. 5 (2016), <https://www.cnas.org/publications/reports/the-new-tools-of-economic-warfare-effects-and-effectiveness-of-contemporary-u-s-financial-sanctions> [<https://perma.cc/5J3X-VGF6>] ("The United States has had a long history with economic coercion, and in the years since 9/11, financial sanctions in particular have taken a prominent role in national security strategy.").

2. Gary Clyde Hufbauer & Barbara Oegg, *Targeted Sanctions: A Policy Alternative?*, PETERSON INST. FOR INT'L ECON. (Feb. 23, 2000), <https://www.piie.com/commentary/speeches-papers/targeted-sanctions-policy-alternative> [<https://perma.cc/CPQ2-GLG7>] (noting that targeted measures can include arms embargoes, travel bans, and asset freezes).

3. *English Translation of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region*, XINHUANET (July 1, 2020, 12:50 AM), http://www.xinhuanet.com/english/2020-07/01/c_139178753.htm [<https://perma.cc/H8FW-ZSTN>] [hereinafter HKSAR Security Law].

4. See Karen Yeung, *How the US Uses the Dollar Payments System to Impose Sanctions on a Global Scale*, S. CHINA MORNING POST (Aug. 25, 2020, 4:30 PM), <https://www.scmp.com/economy/china-economy/article/3098691/how-us-uses-dollar-payments-system-impose-sanctions-global> [<https://perma.cc/3733-QWYV>] (republished on Yahoo Finance, <https://finance.yahoo.com/news/us-uses-dollar-payments-system-093000191.html> [<https://perma.cc/9KY2-WSL6>]) (discussing how the U.S. dollar's dominance has popularized the use of sanctions beginning with the Clinton administration).

5. SUSAN V. LAWRENCE & MICHAEL F. MARTIN, CONG. RES. SERV., R46473, CHINA'S NATIONAL SECURITY LAW FOR HONG KONG: ISSUES FOR CONGRESS 1 (2020) (referring to China's Security Law as a violation of the Joint Declaration).

of Great Britain and Northern Ireland and The Government of the People's Republic of China on the Question of Hong Kong ("Joint Declaration").⁶ China is using the HKSAR Security Law to unify China.⁷ Further, the HKSAR Security law ends the "one country, two systems"⁸ policy that has governed China's relationship with Hong Kong.⁹ To leaders in the U.S., China's action is an erosion of Hong Kong's democratic autonomy.¹⁰ In response to the HKSAR Security Law, the U.S. passed the Hong Kong Autonomy Act ("HKAA") on July 14, 2020.¹¹

6. Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and The Government of the People's Republic of China on the Question of Hong Kong, UK-China, Dec. 19, 1984, 1399 U.N.T.S. 33 [hereinafter *The Joint Declaration*]. The Joint Declaration is a legally binding treaty signed between the United Kingdom and China in 1985 and registered with the U.N. that was part of a planned transition of Hong Kong's sovereignty from the UK to China. LOUISE BROOK-HOLLAND, HOUSE OF COMMONS LIBR., No. 08616, *HONG KONG: THE JOINT DECLARATION 2* (2019) (UK). The Joint Declaration declared China would "resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997." *The Joint Declaration, supra*, at 61.

7. The area which is modern day Hong Kong was "ceded to Great Britain" under agreements between Great Britain and China after the First and Second Opium Wars (1842 and 1860 respectively). LOUISE BROOK-HOLLAND, HOUSE OF COMMONS LIBR., *supra* note 6. Great Britain obtained Hong Kong in 1898 on a ninety-nine-year lease and ruled over Hong Kong until 1997, when the 1984 Sino-British Joint Declaration went into effect. *Id.*

8. The "one country, two systems" policy is the implicitly derived key term of the 1984 Sino-British Joint Declaration. BROOK-HOLLAND, *supra* note 6, at 1. "One country, two systems" refers to the treaty requirements that Hong Kong would be under the authority of China but would still be able to "enjoy a high degree of autonomy, except in foreign and defense affairs." *The Joint Declaration, supra* note 6, at 61. Under the Treaty, Hong Kong autonomy includes being "vested with executive, legislative, and independent judicial power [with final adjudication]," retaining freedom of speech and individual rights, and maintaining the HKSAR as a capitalist financial center. *The Joint Declaration, supra* note 6, at 61–62. These rights were to be recorded in a Basic Law of HKSAR and "remain unchanged for 50 years." *The Joint Declaration, supra* note 6, at 62.

9. Luo Huining, Liaison Off. of the Cent. People's Gov't in the HKSAR, Speech at The Launch Ceremony of Events Marking the 23rd Anniversary of Hong Kong's Return to the Motherland (July 1, 2020), http://www.locpg.gov.cn/jsdt/2020-07/01/c_1210684535.htm [<https://perma.cc/5GES-WA7N>] (China); *see also* LAWRENCE & MARTIN, *supra* note 5, at 1 ("The [People's Republic of China] and HKSAR governments portray the law as a necessary measure to close national security 'loopholes' in HKSAR law, to move Hong Kong from 'turmoil to stability' after a year of sometimes violent protests, and to rebalance the 'one country, two systems' formal to emphasize 'one country.'").

10. *See* LAWRENCE & MARTIN, *supra* note 5, at 1 ("The law is widely seen as undermining the HKSAR's once-high degree of autonomy and eroding the rights promised to Hong Kong in the 1984 Joint Declaration on the Question of Hong Kong . . .").

11. Hong Kong Autonomy Act, Pub. L. No. 116-149, 134 Stat. 663 (2020), <https://www.congress.gov/bill/116th-congress/house-bill/7440/text> [<https://perma.cc/V4EH-PV6K>].

In the past, targeted sanctions have been credited as a success in countries like Iran because the sanctions exploited power asymmetries between the U.S. and the targeted country.¹² The strength of the U.S. dollar and access to U.S. financial markets have made it easier for Foreign Financial Institutions (“FFIs”) and ally countries to align with U.S. foreign policy goals.¹³ However, now that the U.S. is using sanction laws such as the HKAA to put financial pressure on China, enforcing the sanctions is less effective, especially when many financial institutions might feel pressure to choose between two dominant global economies.¹⁴ In addition, FFIs and U.S. financial firms are increasingly drawn to China’s untapped capital market¹⁵ and long-term investment growth prospects.¹⁶ The potential penalties FFIs face under the HKAA might not be strong enough to pull these institutions away from China.¹⁷

Further, the U.S. government’s primary purpose in imposing these sanctions is to encourage democracy over a communist system, as China has held onto a one system, two-country principle that has

12. See Suzanne Katzenstein, *Dollar Unilateralism: The New Frontline of National Security*, 90 Ind. L. J. 293, 306–07 & 343 (2015) (noting that the U.S. targeted sanctions by relying on U.S. market power in international trade to exploit asymmetries between governments in the foreign sector).

13. *Id.* at 343.

14. See Andrew Rennemo, *With China Sanctions, America Pushes the Limits of Its Financial Power*, THE DIPLOMAT (June 19, 2020), <https://thediplomat.com/2020/06/with-china-sanctions-america-pushes-the-limits-of-its-financial-power/> [<https://perma.cc/83Y4-RN3T>] (“[T]he United States risks harm to its sanctions tool, longstanding alliances, and ultimately its geopolitical position if its posture remains one dimensional and overly coercive.”).

15. See Nicholas R. Lardy and Tianlei Huang, *Despite the Rhetoric, US-China Financial Decoupling is Not Happening*, PETERSON INST. FOR INT’L ECON. (July 2, 2020, 11:15 AM), <https://www.piie.com/blogs/china-economic-watch/despite-rhetoric-us-china-financial-decoupling-not-happening> [<https://perma.cc/S8M3-5QZT>] (noting that China’s financial services market is estimated at \$47 trillion). In addition, FFIs occupy “less than 2 percent of the banking assets [markets] and less than 6 percent of the insurance market.” *Id.*

16. In 2020, China has eased restrictions allowing FFIs easier entry into Chinese markets. See Crystal Tai & Jing Yang, *Wall Street Moves Into China, Despite Tech and Trade Battles*, WALL ST. J. VIDEO (Oct. 7, 2020, 5:30 AM), <https://www.wsj.com/video/wall-street-moves-into-china-despite-tech-and-trade-battles/111C45E3-B196-491B-9C83-0D697C889625.html> [<https://perma.cc/2X2J-D487>]. Notably, the Chinese government no longer requires a majority ownership in FFIs in China. *Id.* Several firms have taken advantage by greatly expanding operations in China in 2020, including JP Morgan and Goldman Sachs. *Id.* See generally Jonathan Woetzel et al., *China and the World: Inside the Dynamics of a Changing Relationship*, MCKINSEY GLOB. INST. (2019), <https://www.mckinsey.com/featured-insights/china/china-and-the-world-inside-the-dynamics-of-a-changing-relationship> [<https://perma.cc/Q85P-YX8A>] (discussing the economic prospects in China over this century).

17. Tai & Yang, *supra* note 16.

gradually deteriorated over the past twenty years.¹⁸ The passage of the HKAA has revealed how disconnected U.S. foreign policy goals and perceptions of China are from financial institutions' and companies' investment targets.¹⁹ Thus, by choosing to implement economic sanctions against China, the U.S. could divide financial institutions from ally countries, undermine its position as a global financial power, and risk isolating itself from global economic markets in the long-term.²⁰

This Note proceeds in five parts. Part II provides a brief description of the key provisions impacting financial institutions and the legislative purpose behind the HKAA and its accompanying executive order.²¹ Part III explores the impact of using the HKAA to target China and additional compliance requirements imposed on financial institutions to avoid HKAA penalties.²² Part IV discusses the future implications of the overuse of economic sanctions by the U.S., specifically regarding how FFIs might "de-risk" from the U.S.²³ Part V concludes by summarizing and providing a suggestion for how the U.S. should shift its perspective and strategy toward China going forward.²⁴

II. BACKGROUND AND PURPOSE OF THE HONG KONG AUTONOMY ACT

The HKAA²⁵ was enacted on July 14, 2020, in response to China's passage of the HKSAR Security Law,²⁶ which gave China executive and judicial power over the people of Hong Kong, violating the

18. Hong Kong Autonomy Act, Pub. L. No. 116-149, § 3, 134 Stat. 663 (2020), <https://www.congress.gov/bill/116th-congress/house-bill/7440/text> [<https://perma.cc/V4EH-PV6K>].

19. See, e.g., Bruce Einhorn, *U.S. Businesses in China Not Heeding Trump's Call to Return Home*, BLOOMBERG (Sept. 9, 2020, 12:19 AM), <https://www.bloomberg.com/news/articles/2020-09-09/u-s-businesses-in-china-not-heeding-trump-s-call-to-return-home?sref=uo8ONmoB> [<https://perma.cc/7L27-MVB2>] (noting disconnect exists since U.S. companies remain interested in China for business despite the executive branch's insistence that they return operations to the United States).

20. See *infra* Part II-IV.

21. See *infra* Part II.

22. See *infra* Part III.

23. See *infra* Part IV.

24. See *infra* Part V.

25. Hong Kong Autonomy Act ("HKAA"), Pub. L. No. 116-149, 134 Stat. 663 (2020), <https://www.congress.gov/bill/116th-congress/house-bill/7440/text> [<https://perma.cc/V4EH-PV6K>].

26. HKSAR Security Law, *supra* note 4.

promises contained in the Joint Declaration.²⁷ Despite this bilateral agreement between the United Kingdom and China,²⁸ the U.S. Congress passed the HKAA, imposing sanctions on “foreign persons involved in the erosion of certain obligations of China with respect to Hong Kong [via the Joint Declaration], and for other purposes.”²⁹ Sanctions are imposed on any “foreign person” (“Person”)³⁰ that the Secretary of State deems “is materially contributing to, has materially contributed to, or attempts to materially contribute to the failure of the Government of China to meet its obligations under the Joint Declaration or the Basic Law.”³¹ A Person, which is defined as an individual or entity, “materially contributes” if the Person committed an action which resulted in restrictions on Hong Kongers’ personal freedoms, ability to participate in democratic outcomes, or on the high degree of autonomy in Hong Kong.³²

The Secretary of State and Secretary of the Treasury (“Treasury Secretary”) also can recommend the sanctioning of a financial institution that “knowingly conducts a significant transaction with a foreign person” who has materially contributed to the demise of Hong Kong democratic values.³³ The HKAA does not specifically define “foreign financial institution”; the statute only defines “financial institution” to mean those

27. Under the Security Law Legislation, China suspended many legal rights granted to the people of Hong Kong. HKSAR Security Law, *supra* note 4. It also gave China broad power to imprison people for “acts of secession or subversion of state power,” in light of the protests to maintain Hong Kong Autonomy. Exec. Order No. 13936, 85 Fed. Reg. 43413, 43413 (July 14, 2020), <https://www.federalregister.gov/documents/2020/07/17/2020-15646/the-presidents-executive-order-on-hong-kong-normalization> [<https://perma.cc/4NGH-BRSL>]; see also The Joint Declaration, *supra* note 7, at 61.

28. In 2019, after the Hong Kong protests began, the UK Foreign Office answered a public question regarding the Joint Declaration on its website: “[i]f at some stage in the future we were to take the view that China had breached its

obligations under the Joint Declaration, this would, under international law, be a bilateral matter between us and China and we would pursue it accordingly.” BROOK-HOLLAND, *supra* note 6, at 4 (quoting FOREIGN AND COMMONWEALTH OFFICE, UK PARLIAMENT, No. UIN 266293, HONG KONG: EXTRADITION (June 18, 2019), <https://questions-statements.parliament.uk/written-questions/detail/2019-06-18/266293> [<https://perma.cc/AE5F-ZYQS>]). Also, note that the Joint Declaration does not contain any enforcement or dispute provisions; a breach is assumed to be a suspension of the operation of the treaty under the Vienna Convention on the Law of Treaties. LOUISE BROOK-HOLLAND, HOUSE OF COMMONS LIBR., *supra* note 6, at 3.

29. HKAA § 1, 134 Stat. at 663.

30. HKAA § 2(5), (10), 134 Stat. at 664.

31. HKAA § 5(a), 134 Stat. at 669.

32. HKAA § 5(g), 134 Stat. at 671. Personal freedoms used in the HKAA means “freedom of assembly, speech, press, or independent rule of law.” *Id.*

33. HKAA § 5(b), 134 Stat. at 669.

referenced in 31 U.S.C. § 5312(a)(2).³⁴ Accordingly, under the HKAA and 13 U.S.C. § 5312(a)(2), a financial institution involves activities from a range of entities, including FDIC-insured banks, credit unions, currency exchanges, insurance companies, and U.S. banks operating internationally.³⁵ Thus, the HKAA could apply to any financial institution—foreign or U.S.—involved in a transaction with a Person identified.³⁶

Further, the financial institution must “knowingly conduct[] a significant transaction.”³⁷ Although the HKAA does not define “significant transaction,”³⁸ “knowingly” is defined as “actual knowledge of the conduct, the circumstance, or the result.”³⁹ In addition, transactions under the sanctions described include loans from U.S. financial institutions⁴⁰ and other banking transactions.⁴¹ Considering the broad authority granted to the Secretary of State, the President, and relevant federal agencies,⁴² determining whether an FFI knowingly conducts a

34. HKAA § 2(6), 134 Stat. at 664 (“The term ‘financial institution’ means a financial institution specified in section 5312(a)(2) of Title 31, United States Code.”).

35. HKAA § 2(6), 134 Stat. at 664; 31 U.S.C. § 5312(a)(2)(A)–(Z). Application to U.S. financial institutions operating internationally is further supported by the HKAA definition of “financial institution” which is defined under 31 U.S.C. § 5312(a)(2)(R): “[A] Licensed sender of money or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.” 31 U.S.C. § 5312(a)(2)(R).

36. HKAA § 4(3), 134 Stat. at 668 (“[T]he United States should establish a clear and unambiguous set of penalties with respect to foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, to be involved in the contravention of the obligations of China under the Joint Declaration and the Basic Law *and the financial institutions transacting with those foreign persons.*”).

37. HKAA § 5(b), 134 Stat. at 669.

38. HKAA § 2, 134 Stat. at 663–64.

39. HKAA § 2(9), 134 Stat. at 664.

40. HKAA § 7(b)(1), 134 Stat. at 672 (“The United States Government may prohibit any United States financial institution from making loans or providing credits to the foreign financial institution.”).

41. HKAA § 7(b)(5), 134 Stat. at 672 (“The President may . . . prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve the foreign financial institution.”).

42. HKAA §§ 4(3)–(5), 5(d), 6(a), 134 Stat. at 668–671.

significant transaction will likely be “inherently discretionary and highly fact-specific.”⁴³

Once a Person or FFI is identified by the Secretary of State, the President imposes the sanctions.⁴⁴ For Persons found to materially contribute under the HKAA, the sanctions could include restrictions on transactions in and holding property in the U.S.,⁴⁵ exclusion from the U.S., and revocation of visas and travel documentation.⁴⁶ However, many financial analysts have questioned the impact on Persons sanctioned since the penalties will likely have minimal financial harm since access to loans and investments is easily attainable in China.⁴⁷ This is especially true if the Persons do not own property in the U.S. or have investments in U.S. currency.⁴⁸

Compared to sanctions imposed on Persons, the HKAA imposes much heavier penalties on FFIs and requires U.S. financial institutions and agencies to enforce these penalties.⁴⁹ Ten possible sanctions may be imposed with respect to FFIs for violating the HKAA:

43. Duncan A. W. Abate & Tamer A. Soliman, *The Hong Kong Autonomy Act*, MAYER BROWN (July 17, 2020), <https://www.mayerbrown.com/en/perspectives-events/publications/2020/07/the-hong-kong-autonomy-act> [<https://perma.cc/S42Z-PLNY>].

44. HKAA § 6-7, 134 Stat. at 671–72.

45. HKAA § 6(b)(1), 134 Stat. at 671 (“The President may . . . prohibit any person from— (A) acquiring, holding, withholding, using, transferring, withdrawing, transporting, or exporting *any property that is subject to the jurisdiction of the United States* and with respect to which the foreign person has any interest; (B) dealing in or exercising any right, power, or privilege with respect to such property; or (C) conducting *any transaction involving such property*.”) (emphasis added).

46. HKAA § 6(b)(2), 134 Stat. at 671.

47. See Sum Lok-kei & Enoch Yiu, *Hong Kong Slams US’ Autonomy Act, Urges Washington to Refrain from Measures that Could Affect Financial Institution Operations*, S. CHINA MORNING POST (June 26, 2020, 11:30 PM), <https://www.scmp.com/news/hong-kong/politics/article/3090799/local-observers-believe-us-senates-hong-kong-autonomy-act> [<https://perma.cc/N5VP-5JHY>] (suggesting that the HKAA sanctions specifically target individuals to limit “wiping out everyone” with the sanctions because a broader scope would harm the U.S.’s own economy). A more recent article discusses how the White House has limited its offensive foreign policy measures on China—led by the globalist Treasury Secretary Steven Mnuchin—to avoid actions “that could rock the global economy.” Bob Davis, Kate O’Keeffe, & Lingling Wei, *U.S.’s China Hawks Drive Hard-Line Policies After Trump Turns on Beijing*, WALL ST. J. (Oct. 16, 2020, 12:50 PM), <https://www.wsj.com/articles/u-s-s-china-hawks-drive-hard-line-policies-after-trump-turns-on-beijing-11602867030?st=6ffmvd427b4p4lx> [<https://perma.cc/44FG-LCUQ>].

48. Chi Wang, *US Sanctions and Hong Kong Autonomy Act are Empty Gestures that Show a Failure to Understand*, S. CHINA MORNING POST (July 4, 2020, 2:00 AM), <https://www.scmp.com/comment/opinion/article/3091713/us-sanctions-and-hong-kong-autonomy-act-are-empty-gestures-show> [<https://perma.cc/FP4P-53TZ>].

49. HKAA § 7, 134 Stat. at 671–72.

- (1) The U.S. Government may prohibit any U.S. financial institution from making loans or providing credits to the FFI.
- (2) Neither the Board of Governors of the Federal Reserve System nor the Federal Reserve Bank of New York may designate, or permit the continuation of any prior designation of, the FFI as a primary dealer in U.S. Government debt instruments.
- (3) The FFI may not serve as agent of the U.S. Government or serve as repository for U.S. Government funds.
- (4) The President may . . . prohibit any transactions in foreign exchange that are subject to the jurisdiction of the U.S. and involve the FFI.
- (5) The President may . . . prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the U.S. and involve the FFI.
- (6) The President may . . . prohibit [activities associated with] any property subject to the jurisdiction of the U.S. and . . . which the FFI has any interest.
- (7) The President, in consultation with the Secretary of Commerce, may restrict or prohibit exports, reexports, and transfers (in-country) of commodities, software, and technology subject to the jurisdiction of the U.S. directly or indirectly to the FFI.
- (8) The President may . . . prohibit any U.S. person from investing in or purchasing significant amounts of equity or debt instruments of the FFI.
- (9) The President may direct the Secretary of State, in consultation with the Treasury Secretary and the Secretary of Homeland Security, to exclude from the U.S. any alien that is determined to be a corporate officer or principal of, or a shareholder with a controlling interest in, the FFI subject to regulatory exceptions.

- (10) The President may impose on the principal executive officer or officers of the foreign financial institution, or on individuals performing similar functions and with similar authorities as such officer or officers, any of the sanctions described in paragraphs (1) through (8) that are applicable.⁵⁰

The HKAA first allows the President to impose at least five of these sanctions; then, the President can impose all of the above sanctions if expanded sanctions are deemed necessary.⁵¹

Finally, the President's Executive Order on Hong Kong Normalization ("Executive Order") was issued with the enactment of the HKAA on July 14, 2020.⁵² Part of the Executive Order expands on the types of sanctionable actions by individuals who disrupt Hong Kong's autonomy.⁵³ The Executive Order also grants authority for implementing sanctions to the Treasury Secretary, divisions within the Department of the Treasury ("Treasury")—including the Office of Foreign Assets Control ("OFAC")⁵⁴—and the Secretary of State.⁵⁵ Finally, the Executive Order includes several provisions that reduce the special status of Hong Kong.⁵⁶

Section nine of the HKAA states that the President's authority and his granting of implementation authority under the executive order is

50. HKAA § 7(b), 134 Stat. at 672–73.

51. HKAA § 7(a), 134 Stat. at 671–72.

52. Exec. Order No. 13936, 85 Fed. Reg. 43413 (July 14, 2020), <https://www.federalregister.gov/documents/2020/07/17/2020-15646/the-presidents-executive-order-on-hong-kong-normalization> [<https://perma.cc/4NGH-BRSL>].

53. Exec. Order No. 13936, 85 Fed. Reg. at 43415.

54. OFAC is a division of the U.S. Department of the Treasury that manages economic and trade sanctions related to U.S. foreign policy goals. *Office of Foreign Assets Control - Sanctions Programs and Information*, U.S. DEP'T OF THE TREASURY, <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information> [<https://perma.cc/ZJ5C-48P4>] (last visited Feb. 6, 2020) ("The Office of Foreign Assets Control ("OFAC") of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.").

55. Exec. Order No. 13936, 85 Fed. Reg. at 43416–17.

56. Exec. Order No. 13936, 85 Fed. Reg. at 43414–15. These additional provisions include revoking export license exceptions for Hong Kong, removing preference for Hong Kong passport holders, suspending extradition arrangements with Hong Kong, and terminating certain tax agreements. *Id.*

provided by the International Emergency Economic Powers Act (“IEEPA”).⁵⁷ IEEPA was enacted in 1977⁵⁸ and gives the executive branch broad discretion to oversee “any interest of any foreign country or national thereof.”⁵⁹ Likewise, the Executive Order legally authorizes the Secretary of State and Treasury Secretary—including OFAC—to designate Persons in violation of the HKAA, implement the Executive Order,⁶⁰ and maintain a list of Specifically Designated Nationals and Blocked Persons (“SDN List”).⁶¹

Finally, although the HKAA is an attempt to maintain the autonomy of Hong Kong and uphold the obligations established

57. Exec. Order No. 13936, 85 Fed. Reg. at 43413.; *see also* Hong Kong Autonomy Act, Pub. L. No. 116-149, § 9(a), 134 Stat. 663, 677 (2020), <https://www.congress.gov/bill/116th-congress/house-bill/7440/text> [<https://perma.cc/V4EH-PV6K>] (“The President may exercise all authorities provided under sections 203 and 205 of the International Emergency Economic Powers Act (50 U.S.C. 1702 and 1704) to the extent necessary to carry out this Act.”).

58. CHRISTOPHER A. CASEY ET AL., CONG. RES. SERV., R45618, THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT: ORIGINS, EVOLUTION, AND USE 2 (2020). The IEEPA stemmed from the Passage of the Trading with the Enemy Act (“TWEA”) originating in 1917. *Id.* at 2–3. Both the IEEPA and the TWEA “sit[] at the center of the modern U.S. sanctions regime. *Id.* at i.

59. 50 U.S.C. § 1702(a)(1)(B) (“[T]he President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise . . . investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States.”); *see also* CASEY, ET AL., CONG. RES. SERV., R45618, at 44 (noting that the phrase “any interest of any foreign country or national thereof” grants the executive branch broad discretion and “[t]he interconnectedness of the modern global economy has left few major transactions in which a foreign interest is not involved”).

60. Exec. Order No. 13936, 85 Fed. Reg. at 43417 (“The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including adopting rules and regulations, and to employ all powers granted to me by IEEPA as may be necessary to implement this order. The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury.”); *see also* HKAA § 5(a), 134 Stat. at 669 (“[T]he Secretary of State, in consultation with the Secretary of the Treasury, determines that a foreign person is materially contributing to, has materially contributed to, or attempts to materially contribute to the failure of the Government of China to meet its obligations under the Joint Declaration or the Basic Law, the Secretary of State shall submit to the appropriate congressional committees and leadership a report. . .”).

61. *Hong Kong-Related Sanctions Frequently Asked Question No. 848*, U.S. DEP’T OF THE TREASURY—OFF. OF FOREIGN ASSETS CONTROL, (Oct. 14, 2020), <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/848> [<https://perma.cc/6MDQ-DRD2>]; *see also* Exec. Order No. 13936, 85 Fed. Reg. at 43417 (“The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury [OFAC].”).

previously by Congress⁶² in the Hong Kong Policy Act of 1992⁶³ and the Hong Kong Human Rights and Democracy Act of 2019,⁶⁴ the purpose of the HKAA is ultimately to further a foreign policy agenda against China.⁶⁵ First, section three of the HKAA provides multiple examples of China's gradual overstepping of the autonomy of Hong Kong over the past twenty years.⁶⁶ Section three concludes by indicating that the HKAA is a response to "deep[] concern[] [about China's actions] to the people of Hong Kong, the U.S., and members of the international community."⁶⁷

However, section four of the HKAA and the Congressional Record provide insight into a broader agenda for implementing the HKAA.⁶⁸ First, the HKAA's underlying purpose is to maintain the "one country, two systems" regime in Hong Kong,⁶⁹ despite recognizing that China had already resumed sovereignty over Hong Kong as of July 1997 and has taken numerous actions to solidify its sovereignty during the 2000s.⁷⁰ Ultimately, the HKAA is about sending "a larger signal to China."⁷¹ The U.S. legislators' intent is to use the HKAA to compel financial institutions to impose penalties and respond to "escalation of aggression by the Chinese Communists."⁷² The HKAA implements

62. HKAA § 4(1), 134 Stat. at 667–68.

63. United States-Hong Kong Policy Act of 1992, 66 U.S.C. §§ 5701–5732.

64. Hong Kong Human Rights and Democracy Act of 2019, 66 U.S.C. §§ 5725–5726 (adding two sections and amending § 5721 of the U.S.-Hong Kong Policy Act of 1992).

65. SUSAN V. LAWRENCE AND MICHAEL F. MARTIN, CONG. RES. SERV., R46473, CHINA'S NATIONAL SECURITY LAW FOR HONG KONG: ISSUES FOR CONGRESS 1 (2020); *see also* 116 CONG. REC. S4179 (daily ed. July 2, 2020) (statement of Sen. Boozman) (discussed further in next paragraph).

66. *See, e.g.*, HKAA § 3, 134 Stat. at 664–67.

67. HKAA § 3(16), 134 Stat. at 667.

68. HKAA § 4, 134 Stat. at 667–68.

69. HKAA § 4(2), 134 Stat. at 668.

70. *See* HKAA § 3(9)–(15), 134 Stat. at 665–68 (listing several counts of administrative action China has asserted over Hong Kong, including passing extradition laws, passing education laws to "mainlandize" Hong Kong schoolchildren, and taking other enforcement action against freedom of speech in Hong Kong).

71. 116 CONG. REC. S4179 (daily ed. July 2, 2020) (statement of Sen. Boozman).

72. *Id.* ("That is part of why the Hong Kong Autonomy Act is so important. It is not only an effort to shield freedom loving Hongkongers from this continuing escalation of aggression by the Chinese Communists, but the bill is a larger signal to China. It is a message that the United States and the free world are no longer willing to look past some of the worst behavior that has been occurring. It is a message that our patience has run out."); *see also* HKAA § 4, 134 Stat. at 668. The HKAA hopes to put pressure on foreign persons and financial institutions transaction with foreign persons to establish a multilateral sanctions regime; however, as discussed later, attempts at this multilateral sanctions regime is really forced coercive diplomacy to encourage allies to side with the U.S. and put pressure on China, in light of the current U.S.-China economic tensions. HKAA § 4, 134 Stat. at 668.

economic sanctions to emphasize the power of a democratic political model over communism.⁷³ In the context of the HKAA, communism is described as “the dark shadows of the authoritarian governments that are constantly pushing to systematically erode, corrode, and wrap the values and freedoms that we cherish.”⁷⁴ Although economic sanctions have been popular throughout the twenty-first century regarding countries such as Russia and Iran,⁷⁵ using financial institutions to exert pressure and gain multilateral support will be more challenging under the HKAA, especially when the central goal is to target China.⁷⁶

III. FOREIGN FINANCIAL INSTITUTION RESPONSE TO HKAA

The HKAA sanctions exemplify a common foreign policy tool used by the U.S. government in modern times.⁷⁷ Compared to traditional trade sanctions, which overtly target the economy of an entire country, targeted sanctions attempt to prevent specific individuals or entities from accessing financial systems.⁷⁸ The underlying goal of these sanctions—such as those imposed by the HKAA—is to influence FFIs connected to the targeted actor by exploiting the power of the dollar as the global currency.⁷⁹ Typically, the targeted sanctions and the severe punishment for non-compliance effectively give financial institutions limited or no choice but to comply with the HKAA.⁸⁰ However, this choice to comply is not as easy when the underlying target country is China.⁸¹

73. See 116 CONG. REC. S4179 (discussing stopping the spread of communism as the intentions and purpose of passing the Hong Kong Autonomy Act at multiple points throughout the record).

74. *Id.*

75. See generally ROSENBERG ET AL., *supra* note 1, at 5–6 (discussing the ongoing debate about the effectiveness of sanctions and evidence of coercive impact on foreign countries).

76. Wang, *supra* note 48.

77. See generally ROSENBERG ET AL., *supra* note 1, at 19–26 (summarizing several cases of economic sanctions since 2002, which includes Iran, Russia, Syria, and Venezuela); see also Kathy Gilinan, *A Boom Time for U.S. Sanctions*, THE ATL. (May 3, 2019), https://www.theatlantic.com/politics/archive/2019/05/why-united-states-uses-sanctions-so-much/588625/?utm_source=share&utm_campaign=share [https://perma.cc/63CD-DVU5] (beginning in the early 2000s, the use of targeted economic sanctions has become the “policy instrument of choice” for the U.S. government).

78. ROSENBERG ET AL., *supra* note 1, at 11.

79. Katzenstein, *supra* note 12, at 312.

80. ROSENBERG ET AL., *supra* note 1, at 10 (describing compliance with sanctions less as a choice and more of a requirement) (“abide by the sanctions or risk severe consequences”).

81. Stephen Morris & Katrina Manson, *Mike Pompeo Renews Attack on HSBC as Bank Walks Line Between US and China*, FIN. TIMES (Aug. 26, 2020), <https://on.ft.com/3jhHPTz>

A. *Historical FFI Response to Sanctions*

The most recent historical comparisons to the HKAA sanctions were those imposed on Iran through the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010⁸² and on Russia through the Ukraine Freedom Support Act of 2014.⁸³ Like the HKAA, the 2010 sanctions on Iran targeted specific individuals, forcing compliance through a difficult choice between “maintaining ties to certain designated entities and protecting their access to U.S. banks.”⁸⁴ These sanctions leveraged FFIs’ access to the U.S. capital markets, typically required for cross-border transactions.⁸⁵

In the past, some banks decided that the potential lost profit from violating the U.S. sanctions outweighed the loss from the imposed penalties.⁸⁶ For example, banks may determine that the penalty is less than the net revenue gained from interacting with sanctioned individuals or markets.⁸⁷ Often this was due to failure to enforce the penalties.⁸⁸ However, since the Iran sanctions in 2010, the Treasury has penalized several FFIs—including Credit Suisse, Dutch Bank ING, Standard Chartered, HSBC, and BNP Paribas⁸⁹—in an amount totaling more than \$11 billion in fines.⁹⁰ Most notably, the Treasury fined HSBC \$1.9 billion in 2013 and BNP Paribas \$8.9 billion for interacting with

[<https://perma.cc/5DVG-MGZQ>]; Rebecca Isjwara et al., *Global Banks in Hong Kong Brace for Possible Fallout from New US-China Tensions*, S&P GLOBAL (July 28, 2020), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/global-banks-in-hong-kong-brace-for-possible-fallout-from-new-us-china-tensions-59548894> [<https://perma.cc/7SFZ-H89Y>].

82. Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, 22 U.S.C. §§ 8501–8551.

83. Ukraine Freedom Support Act of 2014, 22 U.S.C. §§ 8921–8930.

84. Katzenstein, *supra* note 12, at 317.

85. ROSENBERG ET AL., *supra* note 1, at 11; Katzenstein, *supra* note 12, at 318.

86. *See* ROSENBERG ET AL., *supra* note 1, at 10 (arguing that financial sanctions incentivize banks to act illicitly since the cost-benefit of engaging with sanctioned individuals outweighs the enforcement action).

87. ROSENBERG ET AL., *supra* note 1, at 10.

88. *See* Katzenstein, *supra* note 12, at 321 (explaining, in the context of Iran, “[f]or years on end, these banks flagrantly violated these regulations by conducting illicit transactions with Iran. They likely calculated that the profits from illicit transactions outweighed the risks and costs of getting caught”).

89. Jamie Robertson, *Are Europe’s Banks Being Prosecuted—or Persecuted?*, BBC (June 30, 2014), <https://www.bbc.com/news/business-28021000> [<https://perma.cc/BBN6-YWXM>]; *see also* Katzenstein, *supra* note 12, at 320 (citing the specific amounts of the settlement agreements between these banks and the Treasury).

90. ROSENBERG ET AL., *supra* note 1, at 10.

sanctioned individuals from a targeted country.⁹¹ Despite some banks risking the penalty, most FFIs have complied with the U.S. targeted sanctions to avoid reputational and financial costs associated with violations.⁹²

B. Financial Institutions Must Choose a Side

Within the past ten years, banks have typically complied with U.S. sanctions because the sanctions forced “a stark and costly choice” between conducting business in the U.S. and the targeted country’s financial market.⁹³ However, China is a very different economic target compared to other recent targets of U.S. Sanctions—Iran and Russia.⁹⁴ When the U.S. targeted both Iran and Russia, choosing access to U.S. financial markets over the Russian or Iranian markets was an easier choice for banks.⁹⁵ First, both Russia and Iran’s economies are primarily driven by one commodity: oil and gas.⁹⁶ When the U.S. imposed targeted sanctions on Iran in 2010, mineral fuels, oils, and derivative products made up 80% of Iran’s export economy—with crude petroleum comprising 69% of that total.⁹⁷ Similarly, when the U.S. imposed sanctions on Russia in 2014, minerals dominated the Russian trade economy, with crude petroleum, refined petroleum, and petroleum gas accounting for over 61% of its exports.⁹⁸ Finally, both the Iranian and

91. Katzenstein, *supra* note 12, at 320–21.

92. ROSENBERG ET AL., *supra* note 1, at 10.

93. Katzenstein, *supra* note 12, at 319.

94. See Rennemo, *supra* note 14 (“China’s size and integration with the world economy, while highly imperfect, is too advanced for purely punitive diplomacy to work.”); Gilinan, *supra* note 77.

95. Katzenstein, *supra* note 12, at 319.

96. Russia Yearly Exports in 2014 Chart, THE OBSERVATORY OF ECON. COMPLEXITY, <https://oec.world/en/profile/country/rus> [<https://perma.cc/Z6RE-WXQ2>] (scroll down to “Yearly Exports”; then on the Yearly Export chart settings, set “depth” to “HS2” and “year” to “2014”) (last visited Sept. 21, 2020) [hereinafter “Russia 2014”]; Iran Yearly Exports in 2010 Chart, THE OBSERVATORY OF ECON. COMPLEXITY, <https://oec.world/en/profile/country/irn> [<https://perma.cc/LUB8-3P4D>] (scroll down to “Yearly Exports”; then on the Yearly Export chart settings, set depth to HS2 and year to 2010) (last visited Sept. 21, 2020) [hereinafter “Iran 2010”].

97. THE OBSERVATORY OF ECON. COMPLEXITY (Iran 2010), *supra* note 96 (noting that data is retrieved from *International Trade Database at the Product Level*, BACI, http://www.cepii.fr/CEPII/en/bdd_modele/presentation.asp?id=37 [<https://perma.cc/HB7G-HYUS>] (last visited Sept. 21, 2020)).

98. THE OBSERVATORY OF ECON. COMPLEXITY (Russia 2014), *supra* note 96.

Russian economies pale in comparison to the U.S. economy.⁹⁹ Iran's \$487 billion GDP was dwarfed by the U.S.' \$14.99 trillion GDP in 2010.¹⁰⁰ In 2014, Russia's \$2.06 trillion was asymmetrical to the U.S.'s \$17.52 trillion market value.¹⁰¹

Despite Russia and Iran's smaller market opportunity and economic dependence on a single commodity, policy scholars have questioned the effectiveness of the modern targeted sanctions in effectuating economic harm.¹⁰² Other scholars have questioned the government aggregation measures, which exaggerate sanctions' effectiveness by failing to consider other factors outside of U.S. sanctions implementation.¹⁰³ Further, the impacts on Russia and Iran could have resulted from collapsing oil prices and internal mismanagement rather than U.S. sanctions imposition alone.¹⁰⁴ Sanctioned countries like Russia have learned to adapt to a "new normal"¹⁰⁵ under these economic sanctions, turning the U.S. sanctions imposed on their countries into an opportunity for domestic policies and internal economic growth.¹⁰⁶ Due

99. *GDP in Current U.S. Dollars 2010*, THE WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?view=map&year=2010> [<https://perma.cc/8KFD-QW6F>] (set chart year to 2010, then scroll down to data table below the world chart) [hereinafter THE WORLD BANK–GDP 2010]; *GDP in Current U.S. Dollars 2014*, THE WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?view=map&year=2014> [<https://perma.cc/8KFD-QW6F>] (set chart year to 2014, then scroll down to data table below the world chart) [hereinafter THE WORLD BANK–GDP 2014].

100. THE WORLD BANK–GDP 2010, *supra* note 99.

101. THE WORLD BANK–GDP 2014, *supra* note 99.

102. See ROSENBERG ET AL., *supra* note 1, at 18 (finding that targeted sanctions have minimal impact on a country's GDP growth, but instead elevate investor's perceptions of risk toward engaging with the sanctioned country). Despite findings of short-term effectiveness of sanctions due to their correlation with investor's risk perceptions, Rosenberg warns that "[o]ur definition of sanctions' effectiveness is predicated on the notion that sanctions alone generally cannot change regime behavior and must be used and evaluated along with other tools of national power, such as military force, diplomacy, cyber capabilities, and intelligence activities." *Id.* at 19–20.

103. ROSENBERG ET AL., *supra* note 1, at 12 (citing Eugene Gholz & Llewelyn Hughes, *Market Structure and Economic Sanctions: the 2010 Rare Earth Elements Episode as a Pathway Case of Market Adjustment*, R. OF INT'L POL. ECON. (2019), <https://doi.org/10.1080/09692290.2019.1693411> [<https://perma.cc/JRF3-QASY>]).

104. ROSENBERG ET AL., *supra* note 1, at 12 (citing Jay Solomon & Summer Said, *Why Saudis Decided Not to Prop Up Oil*, WALL ST. J. (Dec. 21, 2014, 10:33 PM), <https://www.wsj.com/articles/why-saudis-decided-not-to-prop-up-oil-1419219182> [<https://perma.cc/P6HA-ZQZM>]).

105. ROSENBERG ET AL., *supra* note 1, at 12 (quoting Glen Biglaiser & David Lektzian, *The Effect of Sanctions on US Foreign Direct Investment*, 65 INT'L ORG. 531–551 (2011)).

106. Henry Foy, *Russia: Adapting to Sanctions Leaves Economy in Robust Health*, FIN. TIMES (Jan. 29, 2020), <https://on.ft.com/2A41hSE> [<https://perma.cc/YY9L-EPPC>].

to targeted sanctions and a loss of foreign investors, Russia adapted by finding new trade markets in Asia and Africa and strengthening domestic production.¹⁰⁷ Ironically, economic analysts now fear the most prominent danger to the Russian economy is the U.S. deciding to lift the imposed sanctions on Russian individuals.¹⁰⁸ If the U.S. lifts sanctions against Russia, Russia's now stabilized economic growth will be shocked by the return of foreign capital, disrupting its domestic policies in place and currency rate.¹⁰⁹

However, without considering the arguable ineffectiveness of targeted sanctions, the HKAA complicates FFIs' decisions to comply due to China's role as a global power.¹¹⁰ Unlike other countries sanctioned by the U.S., China is the only country that can compete with the U.S. in terms of economic scale.¹¹¹ In 2019, China ranked second in real GDP at \$14.343 trillion to the U.S. at \$21.374 trillion.¹¹² As of August 2020, China had further decreased the gap with the U.S. economy, with estimates showing China's real GDP as approaching \$20 trillion.¹¹³ Amongst many other indicators of China's economic force,¹¹⁴ China is projected to reach GDP parity with the U.S. economy in 2028.¹¹⁵

Due to China's economic growth and future potential, several U.S. companies and FFIs have developed long-term expansion plans into

107. Foy, *supra* note 107.

108. Foy, *supra* note 107.

109. Foy, *supra* note 107.

110. Rennemo, *supra* note 14.

111. See Woetzel et al., *supra* note 16, at 138 (discussing the importance of evaluating the economic drivers and potential revenue to be earned in China for companies in the long term).

112. GDP in Current U.S. Dollars 2019, THE WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?view=map&year=2019> [<https://perma.cc/8KFD-QW6F>] (set chart year to 2019, then scroll down to data table below the world chart) [hereinafter THE WORLD BANK—GDP 2019].

113. Johnathan Cheng, *China's Economy is Bouncing Back—And Gaining Ground on the U.S.*, WALL ST. J. (Aug. 24, 2020, 3:04 PM), <https://www.wsj.com/articles/chinas-economy-is-bouncing-back-and-gaining-ground-on-the-u-s-11598280917?st=3ld9y7lt2vvwcy> [<https://perma.cc/58WW-AQS8>].

114. China became the world's largest economy in purchasing-power-parity in 2014, became the largest trading nation in goods in 2013, has comparable numbers of Global Fortune 500 companies as the U.S., and ranks second in receiving and being the source of foreign direct investment (FDI). Woetzel et al., *supra* note 16, at 1.

115. Cheng, *supra* note 112. ("Homi Kharas, a senior global economics and development fellow at the Brookings Institution, said the coronavirus puts China's economy on track to reach parity with the U.S. in 2028 in absolute terms, using current dollars—two years faster than his pre-coronavirus estimate.").

China, including Citigroup and JPMorgan Chase & Co.¹¹⁶ McKinsey Global Institute estimates that there is \$22 trillion to \$37 trillion of economic value—or 15% to 26% of global GDP by 2040—for global investment opportunities depending on the level of engagement between China and other nations.¹¹⁷ Despite the downside due to trade tensions, the economic investment opportunities due to China’s growth are attractive.¹¹⁸ Some of the long-term initiatives for foreign companies in China include designating China as a center for global growth or as a niche market for China’s strongest economic sectors.¹¹⁹

The size of the Chinese economy and high interest of U.S.-backed companies and foreign institutions in China create a major dilemma for global banks with a client base in Hong Kong (notably HSBC, Standard Chartered, Citigroup, Bank of America, and JP Morgan Chase).¹²⁰ To further complicate financial institutions’ decisions, China’s Ministry of Foreign Affairs announced sanctions on U.S. officials,¹²¹ countering the HKAA.¹²² China’s authority for sanctioning U.S. officials is under Article 29 of the HKSAR Security Law¹²³ by “forbidding sanctions, blockades or hostile activities against the financial hub and China.”¹²⁴ China’s HKSAR Security Law turns a bank’s decision to comply with

116. Cathy Chan, *How Hong Kong Sanctions Could Threaten Wall Street*, BLOOMBERG (July 7, 2020, 5:00 PM), <https://www.bloomberg.com/news/articles/2020-07-07/how-hong-kong-sanctions-could-threaten-wall-street-quicktake?sref=x6qPv4jT> [https://perma.cc/6MM6-L2HD] (last updated Aug. 11, 2020, 12:32 AM).

117. Woetzel et al., *supra* note 16, at viii.

118. McKinsey recommended that despite continued trade tensions and rising debt, “companies would do well to look at the fundamentals of China’s economy, which, in many respects, has continued growth momentum. As we noted in chapter 4, the drivers of consumption growth, including rising incomes, intergenerational transfers, and Chinese consumers’ desire to trade up, may remain solid.” Woetzel et al., *supra* note 16, at 138.

119. *Id.*

120. Isjwara et al., *supra* note 81.

121. Press Release, Ministry of Foreign Affairs of the People’s Republic of China, Foreign Ministry Spokesperson Zhao Lijian’s Regular Press Conference on August 10, 2020 (Aug. 10, 2020), https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1805288.shtml [https://perma.cc/PP5K-6M9C].

122. Cathy Chan, *Global Banks Risk Breaching China Law by Complying with U.S.*, BLOOMBERG (July 9, 2020, 12:00 PM), <https://www.bloomberg.com/news/articles/2020-07-09/global-banks-risk-breaching-china-law-by-complying-with-u-s?sref=uo8ONmoB> [https://perma.cc/SW3R-4EM7].

123. HKSAR Security Law, *supra* note 4 (“imposing sanctions or blockades, or engaging in other hostile activities against the Hong Kong Special Administrative Region or the People’s Republic of China [is an unlawful offense]”).

124. Chan, *supra* note 121.

the U.S. sanctions¹²⁵ into a choice between betting on the growth of the U.S. or the Chinese economy.¹²⁶ Regardless, either decision requires global banks to appease both U.S. and Chinese authorities,¹²⁷ as all of these banks are highly connected in the global economy.¹²⁸

C. *Banks' Responses to the HKAA and U.S.-China Tensions*

First, U.S. banks in Hong Kong face direct pressure to end business with the individuals sanctioned under the HKAA.¹²⁹ Despite the Hong Kong Monetary Authority's claim that the HKAA sanctions have "no legal status" within the Territory, U.S. financial institutions could still face the consequences in the U.S.¹³⁰ Some lawyers noted that "U.S. banks' foreign subsidiaries that are incorporated overseas are generally understood to be non-U.S. entities, which could put them outside Washington's jurisdiction."¹³¹ However, even though foreign branches of U.S. banks have been treated as "separate entities" under the Separate Entity Doctrine,¹³² a U.S. bank's foreign branch is still subject to the laws of both the U.S. and the country where it is situated.¹³³

125. Isjwara et al., *supra* note 81.

126. See Thomas Hale, *Why Trump's Hong Kong Sanctions are Bad News for Banks*, FIN. TIMES (Aug. 11, 2020), <https://on.ft.com/3iuA6Rw> [<https://perma.cc/7PL3-BNQL>] (suggesting how the HKAA creates uncertainty for both U.S. and non-U.S. banks regarding how to respond to sanctions, especially given the number of international transactions conducted in Hong Kong—and implicitly China—using U.S. dollars).

127. Isjwara et al., *supra* note 81.

128. Cathy Chan et al., *Citi, StanChart Eye Accounts of Sanctioned Hong Kong Officials*, BLOOMBERG (Aug. 10, 2020, 3:25 AM), <https://www.bloomberg.com/news/articles/2020-08-10/hong-kong-bankers-move-to-suspend-accounts-after-u-s-sanctions?sref=uo8ONmoB> [<https://perma.cc/T32Z-DPH6>].

129. Hale, *supra* note 126.

130. Thomas Hale, *Hong Kong and China Hit Back at US Sanctions*, FIN. TIMES (Aug. 8, 2020), <https://on.ft.com/2DLYwMh> [<https://perma.cc/U5UD-8WQL>].

131. Hale, *supra* note 126.

132. The Separate Entity Doctrine spans several statutes and regulations. See Fed. Res. Bd., Meeting between Federal Reserve Board Staff and Representatives of Foreign Banking Organizations (July 9, 2012), https://www.federalreserve.gov/newsevents/rr-commpublic/Industry_Meeting_20120709.pdf [<https://perma.cc/W759-9GRS>]. Deposits at U.S. foreign branches are non-reservable, non-insured, and subordinated in right of payment to domestic deposits. *Id.* (citing 12 C.F.R. § 204.128; 12 U.S.C. § 1818(m)(2); 12 U.S.C. § 1221(d)(11)); see also 12 C.F.R. § 211.4; U.C.C. §§ 4-107, 4A-105(a)(2) (AM. L. INST. & UNIF. L. COMM'N 2019).

133. 12 C.F.R. § 211.1; Gerard Comizio & Ryan Chiachiere, "Ringfencing" U.S. Bank Foreign Branch Deposits: Working Toward a Clearing Understanding of Where Deposits are Payable in the Midst of Chaos, 3 Am. U. L. Rev. 249, 251 (2014).

Thus, it is not surprising that Citigroup has complied with the HKAA sanctions, as it is a U.S. institution.¹³⁴ Citigroup is also the only bank of its prime competitors (Standard Chartered and HSBC) to suspend the accounts of the eleven initially sanctioned individuals under the HKAA in August 2020.¹³⁵ Standard Chartered is reviewing relationships and monitoring accounts but noted that it would only suspend new account openings by HKAA-targeted individuals.¹³⁶ However, although HSBC has claimed to follow the same precautions as Standard Chartered, HSBC has been publicly flagged by the U.S. as contributing to the Chinese overtaking of Hong Kong.¹³⁷

Citigroup is likely required to strictly comply with the HKAA, as the Federal Reserve still regulates it under Regulation K,¹³⁸ and non-compliance could result in additional penalties for its U.S. branches operating internationally.¹³⁹ Likewise, Citigroup—and other U.S. financial institutions that might become subject to HKAA if additional persons or corporate entities are added—will require extensive due diligence and bank portfolio reviews for involved entities or individuals.¹⁴⁰ Further, additional diligence will likely impact other investors, multinational companies, and any other entities with business in Hong Kong.¹⁴¹ The entities' diligence process will likely be extensive

134. Chan et al., *supra* note 128.

135. Chan et al., *supra* note 128.

136. Chan et al., *supra* note 128.

137. Harry Wilson & Alfred Liu, *U.S. Blasts HSBC for Siding with China Over Hong Kong*, BLOOMBERG (Aug. 27, 2020, 4:39 AM), <https://www.bloomberg.com/news/articles/2020-08-26/u-s-blasts-hsbc-for-siding-with-china-over-future-of-hong-kong?sref=u08ONmoB> [<https://perma.cc/532J-J73V>].

138. 12 C.F.R. § 211. Under Regulation K rules, the international operations of U.S. banking organizations are still under the authority of the Federal Reserve Board and regulated under the Federal Reserve Act, Bank Holding Company Act, and International Banking Act. *Id.*

139. See Giovanna M. Cinelli et al., *Executive Order on Hong Kong Normalization: Extension and Expansion of the Hong Kong Autonomy Act*, MORGAN LEWIS (July 28, 2020), <https://www.morganlewis.com/pubs/executive-order-on-hong-kong-normalization-extension-and-expansion-of-the-hong-kong-autonomy-act> [<https://perma.cc/HVZ7-CGXF>] (“Given the depth and complexity of financial dealings in Hong Kong, parties operating in the city will need to understand even more than previously whether their dealings involve parties who are or could be subject to these sanctions, which can impact virtually all transactions, including securities trades, equity or debt investments, loans and financings, foreign exchange, and other banking activities.”).

140. Abate & Soliman, *supra* note 43; see also Cinelli et al., *supra* note 139.

141. Cinelli et al., *supra* note 139 (“For example, dealings with persons or entities in Hong Kong will require enhanced due diligence and more detailed examination of individuals and entities . . . involved in transactions.”).

and include following financial trails of individuals and entities associated with sanctioned persons and examining a broad range of assets (securities, commodities, derivative instruments) from linked transactions.¹⁴² Ultimately, the HKAA sanctions create overhead expenses for the U.S. banks, as they are required to respond immediately and likely will conduct more extensive diligence on Hong Kong and Chinese transactions to prepare for a quick exit strategy if necessary.¹⁴³ However, FFIs are better able to wait and see how both the Chinese and U.S. governments continue to respond before taking drastic action.¹⁴⁴ For example, Standard Chartered appeased both Chinese and U.S. authorities by publicly supporting the Chinese Security Law imposed on Hong Kong¹⁴⁵ while also avoiding reputational damage from the U.S. by not evading the HKAA sanctions.¹⁴⁶

HSBC has chosen an alternative route by electing to ignore the risk of HKAA penalties by continuing to support sanctioned individuals.¹⁴⁷ However, HSBC's choice not to comply with the U.S. sanctions under the HKAA is more than a choice to accept the risk of financial penalties as it has been in the past.¹⁴⁸ Now, HSBC chooses to bet on the investment prospects in China compared to relying on U.S. financial systems.¹⁴⁹

HSBC's choice to support China shows a realization of the bargaining asymmetries between the U.S. government and foreign banks.¹⁵⁰ Unlike with prior targeted sanctions, HSBC realized it has the upper hand against the U.S. government, especially since it makes 90%

142. *Id.*

143. *See id.* ("For example, dealings with persons or entities in Hong Kong will require enhanced due diligence and more detailed examination of individuals and entities . . . involved in transactions.").

144. Isjwara et al., *supra* note 81.

145. Marion Dakers & Harry Wilson, *Hong Kong's Two British Banks Back Beijing in Security Law Fight*, BLOOMBERG (June 3, 2020, 1:23 PM), <https://www.bloomberg.com/news/articles/2020-06-03/standard-chartered-supports-china-national-security-law?sref=uo8ONmoB> [<https://perma.cc/MRK7-HJXX>].

146. Wilson & Liu, *supra* note 136.

147. *Id.*

148. LAWRENCE & MARTIN, *supra* note 65; *see also* ROSENBERG ET AL., *supra* note 1, at 10 (describing compliance with sanctions less as a choice and more as a requirement: "abide by the sanctions or risk severe consequences").

149. Wilson & Liu, *supra* note 136.

150. Katzenstein, *supra* note 12, at 343.

of its profit in Asian markets.¹⁵¹ HSBC has been gradually shrinking its “struggling operations in Europe and the U.S.”¹⁵² For example, HSBC already cut 35,000 jobs in its investment bank in the U.S. and Europe earlier this year.¹⁵³ HSBC Chairman Mark Tucker took the position that “there was too much political risk not to support Chinese authorities; they are the long-term future of Hong Kong, forget everything else.”¹⁵⁴

Unlike Iran or Russia sanctions, the U.S. government does not have the bargaining power to control foreign institutions’ that may be willing to forego reliance on the U.S. dollar in order to continue investing in Chinese growth opportunities.¹⁵⁵ Even Standard Chartered has noted the shift: “[m]inus our Hong Kong operations, StanChart is non-existent. Our usual approach is to aggressively sit on the fence as these are no-win issues, but in the past, it has not been a ‘you are with us or else’ situation.”¹⁵⁶ The revenue potential in China is strong enough that foreign banks like HSBC are willing to find workarounds to maintain relationships with sanctioned individuals by transacting completely outside the U.S. financial system or without correspondent banks based in the U.S.¹⁵⁷ Further, the U.S. government’s relationship with FFI’s is interdependent, which limits the reach of U.S. bargaining power.¹⁵⁸

IV. FUTURE IMPACTS FROM OVERUSE OF SANCTIONS

While the HKAA and other recent U.S. political developments have undertones of intentional separation from China, if the U.S. government maintains a protectionist stance against China, there could be negative consequences to the U.S. financial system, such as isolation

151. Stephen Morris & Katrina Manson, *Mike Pompeo Renews Attack on HSBC as Bank Walks Line Between US and China*, FIN. TIMES (Aug. 26, 2020), <https://on.ft.com/3jhHPTz> [<https://perma.cc/5DVG-MGZQ>].

152. Wilson & Liu, *supra* note 136.

153. Simon Clark & Margot Patrick, *HSBC to Cut 35,000 Jobs and \$100 Billion of Assets*, WALL ST. J. (Feb. 18, 2020, 4:19 PM), <https://www.wsj.com/articles/hsbc-holdings-2019-net-profit-plunged-53-11582001092> [<https://perma.cc/4YP6-BB5N>].

154. Stephen Morris, Henny Sender, & Laura Noonan, *HSBC Wobbles on a Geopolitical Tightrope*, FIN. INST. (June 9, 2020), <https://www.ft.com/content/cc35f8e2-83af-4225-826c-b2d99e51ee5e> [<https://perma.cc/XUJ7-HD3M>].

155. Katzenstein, *supra* note 12, at 343.

156. Morris, et al., *supra* note 153.

157. Hale, *supra* note 126.

158. Katzenstein, *supra* note 12, at 343 (“[T]he U.S. government depends on banks like HSBC almost as much as such banks depend on U.S. markets. This interdependency constrains the government in implementing its various harnessing tactics.”).

from key investment markets.¹⁵⁹ Even as the executive branch transitions from the Trump to Biden administration, many of the economic policies, especially regarding China, are expected to remain intact.¹⁶⁰

A. *Disconnect Between U.S. Foreign Policy and U.S. Entities*

Economic sanctions are a form of protectionist trade policy¹⁶¹ and historically have had negative consequences on the American economy.¹⁶² For example, in 1930, the U.S. was engaged in protectionist trade policies.¹⁶³ In an attempt to protect U.S. agricultural communities from the side effects of industrialization, the Smoot-Hawley Tariff Act

159. See Woetzel et al., *supra* note 16, at 120 (discussing how protectionist trade policies in the past resulted in negative economic consequences spanning the global markets).

160. John Hilsenrath & Nick Timiraos, *Biden's Economic Team Charts a New Course for Globalization, With Trumpian Undertones*, WALL ST. J. (Dec. 1, 2020, 4:22 PM), <https://www.wsj.com/articles/biden-economic-team-trade-trump-globalization-11606848311> [<https://perma.cc/2VAN-W25R>]. Although Biden hopes to carve out a third way to work with China—possibly using multilateral trade agreement—Biden is still expected to maintain several Trump policies to balance the bipartisan perspective toward taking a tough stance with penalties against China. *Id.* In addition, even if Biden now disagrees tariffs are the wrong approach to China, the use of sanctions was still heavily implemented under the Obama administration. *Id.* Ultimately, Biden is expected to focus on getting the “domestic house in order” before changing foreign policy or entering into new trade deals. *Id.*; see also Ana Swanson, *Biden's China Policy? A Balancing Act for a Toxic Relationship*, N.Y. TIMES (Nov. 16, 2020), https://www.nytimes.com/2020/11/16/business/economy/biden-china-trade-policy.html?campaign_id=2&emc=edit_th_20201117&instance_id=24175&nl=todaysheadlines®i_id=47793912&segment_id=44667&user_id=4ac32389a14e999477edae019c4494a1 [<https://perma.cc/TDP7-4TJ5>].

161. Lily Kuo, *Trump's China Tariffs Risk 'Tit-for-Tat Protectionism' that Threatens World Economy*, THE GUARDIAN (Mar. 22, 2018, 3:38 PM), <https://www.theguardian.com/us-news/2018/mar/22/trump-sanctions-tariffs-china-trade-wars> [<https://perma.cc/M4TF-AEA7>]; see also Holly Ellyatt, *Putin Takes Another Wipe at Protectionism, 'Sanctions, Bans and Political Bias'*, CNBC (Sept. 12, 2018, 1:48 AM), <https://www.cnbc.com/2018/09/12/putin-takes-another-swipe-at-protectionism-attacks-sanctions-bans-and-political-bias.html> [<https://perma.cc/C22K-RW34>].

162. See Robert Z. Lawrence and Robert E. Litan, *Why Protectionism Doesn't Pay*, HARV. BUS. R. (1987), <https://hbr.org/1987/05/why-protectionism-doesnt-pay> [<https://perma.cc/MP5T-3Z5D>] (considering how low wages abroad and claims of unfair trade practices did not drive the U.S. trade deficit in the 1980s and how protectionist policies are costly and harmful to the American economy).

163. Woetzel et al., *supra* note 16, at 120; Alan Reynolds, *The Smoot-Hawley Tariff and the Great Depression*, CATO INST. (May 7, 2016, 3:27 PM), <https://www.cato.org/blog/smoot-hawley-tariff-great-depression> [<https://perma.cc/JF63-NX2E>].

(“Tariff Act”)¹⁶⁴ was passed in 1930.¹⁶⁵ While the Tariff Act's passage was only one of the precipitating factors of the Great Depression, the anticipation of U.S. protectionist policies along with foreign investors' negative sentiments encouraged foreign lenders and investors to withdraw from the U.S. markets.¹⁶⁶

Today, investors try to anticipate laws and shifts in political policies to minimize the effects on business operations and profit margins.¹⁶⁷ Investors are already anticipating further U.S. trade protectionist policies against China to continue into the Biden administration,¹⁶⁸ heightened by the U.S.'s passage of the HKAA and track record of using FFIs to impose its economic sanctions.¹⁶⁹ Although the HKAA thus far only sanctions twenty-nine individuals as of December 2020,¹⁷⁰ there is a fear that the sanctions list could be expanded to include up to ninety million people, considering the number of state-owned Chinese companies and the number of Chinese Communist Party members.¹⁷¹ Major U.S. financial institutions have over \$71 billion¹⁷² in exposure to China, and increased sanctions on Chinese individuals and entities threaten U.S. banks and their growth plans and potential incomes.¹⁷³ Additional sanctions on China will limit U.S. institutions'

164. Alternatively called the “Tariff Act of 1930.” Tariff Act of 1930, 19 U.S.C. §§ 1202–1683 (2018); 19 U.S.C. § 1654 (2018) (Short Title); *see also* Reynolds, *supra* note 162.

165. Woetzel et al., *supra* note 16, at 1.

166. Reynolds, *supra* note 162 (“The massive withdrawal of foreign lenders from the broker-loan market in early October probably reflected the correctly anticipated decline in the value of the collateral for those loans (stocks), and the fear among foreign capitalists that they would have to liquidate such assets to stay solvent in a world of high tariffs. The process contributed to the crash as both cause and effect.”).

167. *Id.*

168. Even with the change of executive administration, a tough stance against China is expected to continue as Biden intends to focus on “investments into American industry.” Swanson, *supra* note 160.

169. Chan, *supra* note 116.

170. *Sanctions List Search*, OFF. OF FOREIGN ASSETS CONTROL (Dec. 10, 2020, 10:05 AM), <https://sanctionssearch.ofac.treas.gov/> (using program code—“HK-EO13936”—which has been designated for the HKAA and its accompany executive order) [<https://perma.cc/6D8N-4SRB>] (last retrieved Dec. 10, 2020).

171. Chan, *supra* note 116.

172. “The five big U.S. banks had a combined \$71 billion of exposure to China in 2019, with JPMorgan clocking the biggest investment at \$19 billion.” *Id.*

173. Chan, *supra* note 116; *see also* Bloomberg News, *Wall Street Has Billions to Lose in China From Rising Strain*, BLOOMBERG (May 28, 2020, 5:22 AM), <https://www.bloomberg.com/news/articles/2020-05-28/wall-street-has-billions-to-lose-in-china-from-mounting-tension?sref=uo8ONmoB> [<https://perma.cc/2T4R-9BBG>].

opportunities while foreign investors gain.¹⁷⁴ Goldman Sachs estimates that foreign firms are competing for a considerable share of China's brokerage industry, which is expected to hit \$47 billion by 2026.¹⁷⁵

Further, the Senate's Congressional Record on the day of the HKAA passage indicates the disconnect between the U.S. government and U.S. investors regarding how to approach a relationship with China.¹⁷⁶ Throughout the HKAA, the only mention of financial institutions involves using the banks to impose economic sanctions in response to China passing the HKSAR Security Law.¹⁷⁷ Additionally, the Congressional Record of the HKAA emphasizes how the sanctions are intended to "penalize[] banks that choose to finance the erosion of Hong Kong's autonomy."¹⁷⁸ This statement emphasizes how disconnected the U.S. legislative and executive branches are from what U.S. institutions and companies have to lose from these policies¹⁷⁹ by intentionally ignoring the interconnectivity between China, the U.S., and Hong Kong.¹⁸⁰

Protectionist ideas have emanated from U.S. politicians despite U.S. companies' resistance and push forward on Chinese investments.¹⁸¹ The Trump administration threatened to impose "massive tariffs,"¹⁸² decouple from the Chinese market, and even block U.S. companies that outsource jobs to China from receiving federal contracts.¹⁸³ Although the

174. Chan, *supra* note 116; *see also* Bloomberg News, *supra* note 173.

175. Chan, *supra* note 116.

176. 116 CONG. REC. S4179 (daily ed. July 2, 2020) (statement of Sen. Boozman).

177. Hong Kong Autonomy Act, Pub. L. No. 116-149, 134 Stat. 663 (2020), <https://www.congress.gov/bill/116th-congress/house-bill/7440/text> [<https://perma.cc/V4EH-PV6K>].

178. 116 CONG. REC. S4179.

179. *See* Bloomberg News, *supra* note 173 (discussing the large amounts of exposure—meaning billions of dollars to lose—U.S. banks have tied to the Chinese economy).

180. *See* Chan et al., *supra* note 128 (quoting a strategy consultant in Hong Kong, who suggests that banks would be hard pressed to decide to cut off customers given they have an "international footprint that straddles the U.S., Hong Kong, and mainland China").

181. Tom Mitchel, *US Companies Defy Trump's Threats about Decoupling from China*, FIN. TIMES (Sept. 9, 2020), <https://on.ft.com/2DHZy7r> [<https://perma.cc/UPU5-DYHA>].

182. Remarks by President Trump in Press Conference, The White House (Sept. 7, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-press-conference-september-7-2020/> [<https://perma.cc/3UFJ-K7RH>] ("Whether it's decoupling or putting in massive tariffs like I've been doing already, we're going to end our reliance on China because we can't rely on China.").

183. *Id.* ("[W]e'll impose tariffs on companies that desert America to create jobs in China and other countries . . . [and] prohibit federal contracts from companies that outsource to China.").

Biden administration is unlikely to impose new sanctions, the current policies against China are likely to continue,¹⁸⁴ especially as Biden has openly expressed taking a strong stance against China.¹⁸⁵ In addition, the Biden administration will still have to balance the interests of Congress, which continues to maintain strong bipartisan support for taking a stance against China, citing national security concerns.¹⁸⁶ While Biden's approach may differ—for example, by seeking support of European allies to increase bargaining power—Biden's main priority remains the same as Trump's.¹⁸⁷ Similar to the Trump administration, Biden's plan focuses on domestic policies and programs to alleviate the economic burdens on Americans affected by global trade confrontations.¹⁸⁸

Meanwhile, the U.S. Chamber of Commerce in Shanghai surveyed U.S. businesses and found that the majority of those surveyed intend to continue pursuing business interests in China, despite the rising tensions in U.S.-China relations.¹⁸⁹ Further, some of these businesses with interests in China are instead pushing for the Biden administration to keep current policies intact to be used as a bargaining point to force Chinese concessions on core economic policies.¹⁹⁰ Ultimately, economic sanctions like the HKAA and the current political tension between the U.S. and China are not likely to dissuade either U.S. or international financial institutions and companies from forgoing lending and financial

184. Current policies against China are expected to continue especially after the appointment of Janet Yellen to Treasury Secretary; one close to the future Treasury Secretary expects “the new administration to be reluctant to remove tariffs on China but to explore removing tariffs in other areas that affect allies, such as steel and aluminum.” Hilsenrath & Timiraos, *supra* note 160.

185. Swanson, *supra* note 160 (“Mr. Biden has said the United States must get ‘tough with China,’ and referred to Xi Jinping, the Chinese leader, as a ‘thug.’”).

186. Swanson, *supra* note 160.

187. Hilsenrath & Timiraos, *supra* note 160.

188. *Id.* (“Biden has signaled he wants to push allies for help confronting China and press for more aggressive programs domestically to help Americans hurt by trade . . .”); *see also* Swanson, *supra* note 160 (“Mr. Biden promised to make significant investments into American industry, including \$300 billion in technology industries that he said would create three million “good-paying” jobs, as well as channeling more government dollars into purchasing American products like automobiles and pharmaceuticals.”).

189. Einhorn, *supra* note 19; Thomas Hale et al., *Vanguard Uproots Staff from Hong Kong to Focus on Shanghai*, *FIN. TIMES* (Aug. 26, 2020), <https://www.ft.com/content/46683cde-9707-4023-9378-52e6491f8817> [<https://perma.cc/YUS9-ELMB>].

190. Hilsenrath & Timiraos, *supra* note 160.

opportunities in China.¹⁹¹ However, the use of sanction actions such as the HKAA, which will likely continue given the bipartisan support of the protectionist foreign policy agenda,¹⁹² could have negative implications on the U.S. financial system, as international financial institutions attempt to de-risk from the U.S. economy.¹⁹³

B. De-risking from the U.S. Markets and Possible Long-Term Impact

If the U.S. continues to use foreign banks to impose economic sanctions, it could lead foreign institutions to de-risk from the U.S. by pursuing relationships in other countries.¹⁹⁴ Continued challenges with U.S. regulations, along with increased growth in China, could create shifts that weaken the dollar's dominance as the world currency.¹⁹⁵ Finally, the overuse of sanctions and disengagement with China could tarnish future relationships with developing countries.¹⁹⁶ This approach could weaken U.S. bargaining position later in the twenty-first century as many developing countries take a larger role in the global economy.¹⁹⁷

1. U.S. Economic Sanctions Causing Banks to De-risk

The U.S. Department of State defines “de-risking” as “the phenomenon of financial institutions terminating or restricting business

191. See Einhorn, *supra* note 19 (citing a survey by the American Chamber of Commerce in Shanghai that reports that 75% of companies do not intend to relocate out of China, despite Trump's remarks).

192. Even as the United States shifts to the Biden administration, there is strong bipartisan support for continuing a tough stance against Chinese economic policies and trade actions. Swanson, *supra* note 160 (“Congress is also relatively unified on taking a tough stance on China. Hundreds of China-related bills are circulating, including several bipartisan efforts that echo Mr. Biden's emphasis on competing with China by investing in American industries like quantum computing and artificial intelligence.”); see also Dave Michaels & Alexander Osipovich, *Congress Sets Stage for Exiling Chinese Stocks from U.S. Over Audit Dispute*, WALL ST. J. (Dec. 2, 2020), <https://www.wsj.com/articles/congress-sets-stage-for-exiling-chinese-stocks-from-u-s-over-audit-dispute-11606946071> [<https://perma.cc/8VF8-6YEP>] (noting that legislation in response to Chinese trade concerns continue to pass unanimously).

193. ROSENBERG ET AL., *supra* note 1, at 36.

194. Financial institutions have begun de-risking from the United States in the past in response to sanctions on Iran and Russia, so I propose this will definitely continue with China. ROSENBERG ET AL., *supra* note 1, at 35.

195. ROSENBERG ET AL., *supra* note 1, at 35; see also *infra* Part VI.B.2.

196. Rennemo, *supra* note 14; see *infra* Part VI.B.3.

197. Leslie McCullough, *AidData Sheds Light on Chinese Foreign Aid*, WM & MARY (July 8, 2020), <https://www.wm.edu/news/stories/2020/aiddata-sheds-light-on-chinese-foreign-aid.php> [<https://perma.cc/MQ4T-9TV3>]; See *infra* Part VI.B.3.

relationships with clients or categories of clients to avoid, rather than manage risk.”¹⁹⁸ As a response to increasing threats of economic sanction penalties, U.S. financial institutions and FFIs have begun de-risking their portfolios from clients in countries seen as high-risk for sanction violations.¹⁹⁹ A major component of de-risking is reducing “foreign correspondent banking accounts.”²⁰⁰ These accounts act like several of the banks in Hong Kong—foreign banks operating in one country maintain accounts at a U.S. financial institution to allow clients to conduct U.S. dollar transactions.²⁰¹ Because banks can be found to have violated U.S. economic sanctions without explicit knowledge—and only need to be connected to an individual who has “materially contributed”²⁰²—financial institutions have begun to terminate links to foreign bank accounts where they lack direct oversight over violating transactions.²⁰³

Rather than managing risk with targeted countries and individuals in order to comply with the U.S. sanctions, many U.S. and foreign banks have terminated thousands of corresponding banking relationships across various countries since the increase in the use of economic sanctions.²⁰⁴ Surveys by both the World Bank²⁰⁵ and the U.K. Financial Conduct Authority²⁰⁶ found that banks would rather eliminate entire classes of

198. *De-risking*, THE U.S. DEP’T OF STATE, <https://www.state.gov/de-risking/> [<https://perma.cc/9RVY-BDB7>] (last visited Sept. 26, 2020).

199. ROSENBERG ET AL., *supra* note 1, at 35.

200. Julie Copeland & Mirella DeRose, *The Risks of De-Risking*, PROGRAM ON CORP. COMPLIANCE AND ENF’T AT THE N.Y.U. (Sept. 7, 2016), https://wp.nyu.edu/compliance_enforcement/2016/09/07/the-risks-of-de-risking/ [<https://perma.cc/NZZ2-99R6>].

201. *Id.*

202. Hong Kong Autonomy Act, Pub. L. No. 116-149, § 5(a), 134 Stat. 663, 666 (2020), <https://www.congress.gov/bill/116th-congress/house-bill/7440/text> [<https://perma.cc/V4EH-PV6K>].

203. *See* Copeland & DeRose, *supra* note 200 (“[H]eightened enforcement actions combined with stricter financial regulations and considerations of profitability are causing large banks to avoid rather than assess actual financial risk by limiting or eliminating entire classes of customers based on country and product line.”); *see also* ROSENBERG ET AL., *supra* note 1, at 35.

204. ROSENBERG ET AL., *supra* note 1, at 35.

205. Copeland & DeRose, *supra* note 200 (citing *Fact Finding Summary from De-risking Surveys*, THE WORLD BANK (Nov. 1, 2015), <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/534371468197058296/fact-finding-summary-from-de-risking-surveys> [<https://perma.cc/Y9H9-SJCG>]).

206. Copeland & DeRose, *supra* note 200 (citing David Artingstall et al., *Drivers and Impacts of Derisking*, FIN. CONDUCT AUTH. (Feb. 2016), <https://www.fca.org.uk/your-fca/documents/research/drivers-impacts-of-derisking> [<https://perma.cc/M2VL-3DZ5>]).

customers from targeted countries than comply with stricter regulations and heightened sanctions enforcement.²⁰⁷ The sanctions have encouraged both U.S. companies and FFIs to avoid transacting with entire bodies of people from sanctioned regions such as the Middle East, Latin America, and Africa.²⁰⁸ This approach could exclude many foreign investors from the U.S. financial markets²⁰⁹ and eventually weaken the dollar as the primary international exchange currency.²¹⁰

De-risking has not gone unnoticed by the U.S. government.²¹¹ Its major concern is that de-risking reduces the force of sanctions to compel behavior against a targeted country.²¹² Banks have considerable influence over private actors and cross-border connections.²¹³ With limited access to foreign correspondent transactions, the U.S. government loses transparency and authority over foreign financial networks.²¹⁴

In 2014, the U.S. Treasury acknowledged the effects of institutions terminating relationships to reduce their risk of penalties.²¹⁵ In an attempt to deter financial institutions from “de-risking” and emphasize the importance of global banking relationships, the Treasury and the federal banking agencies issued a Joint Fact Sheet on Foreign Correspondent Banking (“Joint Fact Sheet”).²¹⁶ This press release outlined expectations, enforcement actions, and penalties under programs

207. Copeland & DeRose, *supra* note 200.

208. Thomas Baxter, *Compliance – Some Thoughts About Reaching the Next Level*, THE FED. RES. BANK OF N.Y. (Feb. 9, 2015), <https://www.newyorkfed.org/newsevents/speeches/2015/bax020915>, [<https://perma.cc/C9P3-4LZF>].

209. See Copeland & DeRose, *supra* note 200 (noting that funds may go “underground,” out of financial institution’s oversight).

210. Baxter, *supra* note 208.

211. Copeland & DeRose, *supra* note 200 (referring to senior U.S. government members—like David Cohen, former CIA Deputy Director and Treasury Under Secretary—who have declared de-risking a top priority and policy concern).

212. ROSENBERG ET AL., *supra* note 1, at 35.

213. *Id.*

214. *Id.*; see also *Joint Fact Sheet on Foreign Correspondent Banking: Approach to BSA/AML and OFAC Sanctions Supervision and Enforcement*, THE U.S. DEP’T OF THE TREASURY AND FED. BANKING AGENCIES (Aug. 30, 2016), <https://www.treasury.gov/press-center/press-releases/Documents/Foreign%20Correspondent%20Banking%20Fact%20Sheet.pdf> [<https://perma.cc/U9C6-NH2Z>].

215. See Copeland & DeRose, *supra* note 200 (referring to a speech by U.S. Treasury Under Secretary for Terrorism and Financial Intelligence David Cohen who “addresses concerns about de-risking was one of the Department of Treasury’s top policy objectives”).

216. THE U.S. DEP’T OF THE TREASURY AND FED. BANKING AGENCIES, *supra* note 214.

such as economic sanctions administered by the Treasury's OFAC²¹⁷—i.e., the entity enforcing HKAA.²¹⁸ The Joint Fact Sheet emphasizes that most financial institutions identified for penalties from continued connection to a sanctioned individual usually correct the unlawful action before penalties or enforcement occurs.²¹⁹ Additionally, the Joint Fact Sheet emphasized that the penalties for violating OFAC sanctions involved sustained patterns or major violations by financial institutions and not unintentional mistakes or unintentional evasion of the sanctions.²²⁰

2. De-risking Leading to Potential Decline in Dollar Dominance

Despite the government's attempts to reduce de-risking, the U.S. has continued to impose economic sanctions.²²¹ Continued use of targeted economic sanctions for U.S. foreign policy will further encourage FFIs to de-risk to avoid the sanctions violation penalties and harm to reputation.²²² De-risking could gradually reduce the dollar as a currency of choice.²²³

Although a dramatic shift away from the U.S. as the key market for investment and currency transactions is unlikely, responses to the tension between the U.S. and China suggest investors and foreign banks are gradually shifting away from complete dependence on the U.S. as a financial center.²²⁴ For example, HSBC already removed a large portion

217. *Id.* (noting the federal banking agencies included FDIC NCUA, OCC, FRB).

218. *Id.*

219. *See id.* ("The vast majority (about 95%) of BSA/OFAC compliance deficiencies identified . . . are corrected by the institution's management without the needed for any enforcement action or penalty.").

220. *Id.*

221. Since 2016, the United States has continued to sanction numerous countries individually and under groups of foreign policy sanctions programs. *Sanctions Programs and Country Information*, THE U.S. DEP'T OF THE TREASURY, <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information> [<https://perma.cc/U877-QNAG>] (last retrieved Oct. 23, 2020) (listing multiple sanctions programs since the issuance of the Joint Fact sheet on de-risking in 2016).

222. *See* ROSENBERG ET AL., *supra* note 1, at 35; Baxter, *supra* note 208 ("Even the size of penalties for violations, and the potential reputational damage associated with this business, it is very difficult to quarrel with the business judgment [of de-risking]").

223. Copeland & DeRose, *supra* note 200.

224. Weizhen Tan, *The Dollar May Slide Further, but Analysts Say its Demise is 'Greatly Exaggerated'*, CNBC (Aug. 23, 2020, 7:43 PM), <https://www.cnbc.com/2020/08/24/us-dollar-still-unrivaled-as-global-reserve-currency-versus-yuan-euro.html> [<https://perma.cc/3EP7-3FBZ>].

of its U.S. operations in early 2020, and analysts have commented that the chance of HSBC keeping U.S. operations is more unlikely after the passage of the HKAA.²²⁵ Further, the strength of the dollar has been called into question by several investment analysts and strategists.²²⁶ Blackrock strategists expect the dollar's weakness to persist, making its prominence uncertain in the long-term.²²⁷ However, other economists consider the possibility of the dollar's decline as overdramatized and that the dollar's status as the global currency is paramount to either the yuan or euro.²²⁸

In light of recent trends in Chinese growth, a gradual shift away from the dollar during this century should not be wholly dismissed,²²⁹ especially as the euro and yuan could balance out exchange reserves.²³⁰ The Chinese government is expanding the scope of its capital markets to allow for more foreign investors.²³¹ U.S. companies and investment funds continue to look towards China as a major growth opportunity, even as the conflict between the two countries continues.²³²

225. Chad Bray & Enoch You, *Does HSBC Need Its US Business? Bank Says Yes, Some Investors Call for a Break-up*, S. CHINA MORNING POST (Sept. 3, 2020, 7:30 AM), <https://www.scmp.com/business/banking-finance/article/3099942/does-hsbc-need-its-us-business-bank-says-yes-some> [<https://perma.cc/A3JW-54PH>].

226. Tan, *supra* note 224.

227. *Id.*

228. *Id.*

229. Evelyn Cheng, *Global Funds Invest More in China as Coronavirus Spreads to the Rest of the World*, CNBC (May 13, 2020, 8:26 PM), <https://www.cnbc.com/2020/05/14/global-funds-invest-more-in-china-as-coronavirus-spreads-to-the-world.html> [<https://perma.cc/X9LZ-YP2E>] (“[E]ven at lower levels of growth, going to be the dominant, the super majority driver of growth (over the) next 10 years.”).

230. See Saqib Iqbal Ahmed, *U.S. Dollar's Woes are Only Beginning, Some Bears Say*, THOMSON REUTERS (Sept. 15, 2020, 4:46 PM), <https://www.reuters.com/article/usa-markets-dollar-analysis-idUSKBN25S3KN> [<https://perma.cc/Z4TR-T96T>]; see also Mark Gilbert & Marcus Ashworth, *A Currency War Is the Last Thing the World Needs*, BLOOMBERG (Sept. 3, 2020, 1:00 AM), <https://www.bloomberg.com/opinion/articles/2020-09-03/euro-v-dollar-a-currency-war-is-the-last-thing-the-world-needs?sref=x6qPv4jT> [<https://perma.cc/JC5L-V8JE>]; Frank Ting, *Chinese Yuan to Become No. 3 Global Currency by 2030 after US Dollar, Euro, Morgan Stanley Predicts*, S. CHINA MORNING POST (Sept. 8, 2020, 9:00 AM), <https://www.scmp.com/economy/china-economy/article/3100575/chinese-yuan-become-no-3-global-currency-2030-after-us-dollar> [<https://perma.cc/6H34-N24D>].

231. Luoyan Liu & Meg Shen, *China Expands Investment Scope for Foreign Investors Under Combined Scheme*, THOMSON REUTERS (Sept. 25, 2020), <https://www.reuters.com/article/us-china-economy-investment/china-expands-investment-scope-for-foreign-investors-under-combined-scheme-idUSKCN26G1ZM> [<https://perma.cc/T8BN-HDL4>].

232. Andrew Browne, *Bloomberg New Economy: Fund Managers Are Rushing Into China*, BLOOMBERG (Sept. 12, 2020, 6:45 AM), <https://www.bloomberg.com/news/newsletters/2020-09-12/bloomberg-new-economy-fund->

Additionally, the U.S. sanction-heavy strategy has encouraged companies to safeguard against future sanctions by increasing compliance efforts and attempting to avoid the U.S. financial system.²³³ One recent trend in terms of sanctions is the increased use of alternative currency clauses to minimize risk in case a party becomes subject to U.S. sanctions.²³⁴ China and Hong Kong's institutions have also begun hiring more regulatory and compliance lawyers in light of the U.S. sanctions and Chinese security laws.²³⁵ The increase of compliance operations could be a response to avoid U.S. sanctions and bypass the U.S. financial system going forward, which could decrease the dollar's dominance in the long term.²³⁶ There is no question that the dollar dominates international exchange markets.²³⁷ However, the dollar's future as a key foreign policy bargaining tool is not guaranteed if the U.S. uses economic sanctions to coerce allies and separate them from China.²³⁸

3. Long-Term Impact on U.S. Relationships with Allies and Developing Countries

The use of U.S. sanctions and gradual de-risking from the U.S. as the center of global capital markets can potentially impact other international relationships with European countries and developing

managers-are-rushing-into-china?sref=uo8ONmoB [https://perma.cc/F5EL-MCDU]; see also Cheng, *supra* note 229 (noting that investors are seeking to increase investments in China, despite COVID-19 and trade war turmoil).

233. Jason Hungerford et al., *Issues Arising for Financial Institutions and Regulated Entities*, GLOBAL INVESTIGATIONS REV.: THE GUIDE TO SANCTIONS, at 182 (2020), https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2020/09/11-issues-arising-for-financial-institutions-and-regulated-entities_2.pdf [https://perma.cc/6E5A-N9VG].

234. The "alternative currency clauses" designate foreign currency outside of USD to use in anticipating possible sanctions from the U.S. government. See *id.* ("The purpose of alternative currency clauses is usually to obviate U.S. primary sanctions risk in the event a party or a transaction becomes subject to U.S. sanctions.").

235. Alun John & Sumeet Chatterjee, *Hong Kong Financial Firms Step Up Compliance Hiring Amid U.S. Sanctions, Security Law*, THOMSON REUTERS (Sept. 15, 2020, 4:55 PM), <https://www.reuters.com/article/hongkong-security-finance-idUSKBN25V068> [https://perma.cc/D9SL-2VHC].

236. John & Chatterjee, *supra* note 235; see also Baxter, *supra* note 208 (discussing how the role of the U.S. dollar as "the international medium of exchange" can lead to different compliance risks, which can lead "U.S. correspondent banks [] to 'de-risk'").

237. Tan, *supra* note 224.

238. See Rennemo, *supra* note 14 (discussing how the dollar currently dominates "88 percent of foreign exchange transactions . . . [however] the dollar's position is not pre-ordained").

countries.²³⁹ U.S. politicians have recognized these risks and expressed concerns about the overuse of sanctions.²⁴⁰ Economic sanctions like the HKAA are only successful when U.S. goals align with or are widely accepted by foreign governments and institutions.²⁴¹ However, now that the sanctions target China, other countries are less willing to comply with the U.S. and abandon efforts in China, as they consider the role of the Chinese economy in their countries' futures.²⁴²

First, European allies have grown increasingly concerned over the U.S.' use of economic sanctions and "abusing its hegemonic privileges."²⁴³ In 2015, the "weaponization of finance" by the U.S. was considered a top risk in politics and in foreign markets.²⁴⁴ Further, the risks of a decoupling between the U.S. and China and the political tensions between the two countries were ranked as two of the top five geopolitical risks threatening the global economy in 2020.²⁴⁵ The weaponization of global trade amplifies much of this tension.²⁴⁶ The risk of the tensions between China and the U.S. not only threatens a \$5 trillion technology industry, but a great decoupling would force countries to choose between a side on a "virtual Berlin Wall," which risks creating a

239. See ROSENBERG ET AL., *supra* note 1, at 13 ("Political risk analysts have predicted that this 'weaponization of finance' could trigger a politically motivated diversification away from U.S. capital markets and the dollar.").

240. *Id.*

241. Katzenstein, *supra* note 12, at 342.

242. Rennemo, *supra* note 14.

243. See ROSENBERG ET AL., *supra* note 1, at 13 (discussing how initiatives like BRICS—a group of developing countries called upon by Vladimir Putin—have emerged in response to the U.S.'s "weaponization of finance" and can lead other allies to question the U.S.'s misuse of this financial power).

244. *Eurasia Group Publishes Top Risks 2015*, EURASIA GROUP (Jan. 5, 2015), <https://www.eurasiagroup.net/media/eurasia-group-publishes-top-risks-2015>

[<https://perma.cc/7BD7-FLNF>] ("The weaponization of finance: To achieve foreign policy goals without military might, Washington is weaponizing finance on a new scale. It is using carrots (access to capital markets) and sticks (varied types of sanctions) as tools of coercive diplomacy. But this strategy will damage relations with allies, particularly in Europe, and US companies will find themselves caught in the crossfire between Washington and sanctioned states.").

245. Ian Bremmer & Cliff Kupchan, *Top Risks 2020: Coronavirus Edition*, EURASIA GROUP at 7 (Mar. 19, 2020), https://www.eurasiagroup.net/files/upload/top_risks_2020_coronavirus_edition_1.pdf [<https://perma.cc/WN4A-RE9V>].

246. Ian Bremmer & Cliff Kupchan, *Risk 2: The Great Decoupling*, EURASIA GROUP (Jan 6, 2020), <https://www.eurasiagroup.net/live-post/risk-2-great-decoupling> [<https://perma.cc/6RJZ-N2BE>].

rigid divide in investments, financial services, and several other industries.²⁴⁷

Ultimately, the use of targeted sanctions to weaponize the U.S. capital market has grown to be seen as a form of “coercive diplomacy” over the past several years.²⁴⁸ Forcing European countries to choose sides will likely “damage relations with allies, particularly in Europe, and U.S. companies will find themselves caught in the crossfire between Washington and sanctioned states.”²⁴⁹ Effects of the U.S. attempting to pressure European allies by using sanctions have already emerged as European leaders have announced efforts to stand on their own against China.²⁵⁰ Although European and Chinese trade relationships are equally filled with feelings of distrust and tensions,²⁵¹ Europe has taken strategic steps to manage its position with China rather than take the U.S. approach towards decoupling.²⁵² Ultimately, Europe understands the need to cooperate with China to achieve Europe’s economic goals²⁵³ and has not

247. Bremmer & Kupchan, *supra* note 246.

248. EURASIA GROUP, *supra* note 244; *see also* Rennemo, *supra* note 14 (discussing how the U.S. dependence on sanctions is unhealthy and its use of sanctions against China is an example of “coercive diplomacy”).

249. *See* EURASIA GROUP, *supra* note 244.

250. Echoing thoughts against relying on countries such as the United States in dealing with China, Merkel claimed “we Europeans must really take fate into our own hands.” Dan Baer, *Europe and China’s ‘Virtual Summit’*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Sept. 17, 2020), <https://carnegieendowment.org/2020/09/17/europe-and-china-s-virtual-summit-pub-82750> [<https://perma.cc/K2TF-79Q4>]. Similar reactions have been expressed by the French Minister of State for European Affairs, claiming “Europeans know that they must once again speak the language of power, without losing sight of the grammar of cooperation.” *Id.*

251. Janka Oertel, *The New China Consensus: How Europe is Growing Wary of Beijing*, EUROPEAN COUNCIL ON FOREIGN RELATIONS (Sept. 7, 2020), https://www.ecfr.eu/publications/summary/the_new_china_consensus_how_europe_is_growing_wary_of_beijing [<https://perma.cc/9NT9-3652>].

252. Europe seeks to “diversify” from China rather than “decouple.” Andreas Kluth, Opinion, *Europe Just Declared Independence from China*, BLOOMBERG (Sept. 5, 2020, 1:00 AM), <https://www.bloomberg.com/opinion/articles/2020-09-05/europe-just-declared-independence-from-china?sref=x6qPv4jT> [<https://perma.cc/B9VH-KSBL>].

253. *See* Kluth, *supra* note 252 (discussing how some European countries like Germany have not responded to the U.S. calls to “decouple” from China, especially since European countries realize that “they must also seek Chinese cooperation wherever necessary to solve global problems, from climate change to the next pandemic”); *see also* Joshua Mitnick, *Why the U.S. Can’t Get Israel to Break Up with China*, FOREIGN POLICY (June 16, 2020), <https://foreignpolicy.com/2020/06/16/us-israel-china-deals/> [<https://perma.cc/8QEY-TKHY>] (“Israel sees China as an opportunity.”).

been pushed away from China through the U.S.' use of trade tactics like economic sanctions.²⁵⁴

Finally, the continued overuse of targeted economic sanctions under policies like the HKAA could limit the U.S.'s bargaining power with developing countries in the twenty-first century.²⁵⁵ This is especially concerning as countries like China are beginning to become immunized from potential impacts from sanctions,²⁵⁶ form coalitions with other sanctioned countries,²⁵⁷ and invest in developing markets—for example, China's Belt and Road Initiative²⁵⁸—from which U.S. and western banks have attempted to de-risk.²⁵⁹

Even if the U.S. does not target a developing country directly, many emerging markets are affected indirectly—"becoming poorer and more marginalized"²⁶⁰—as financial institutions withdraw from areas seen as too risky to chance penalties for not complying with U.S.

254. Rennemo, *supra* note 14; see Andrew Michta, *Can China Turn Europe Against America*, WALL ST. J. (Sept. 13, 2020, 12:16 PM), <https://www.wsj.com/articles/can-china-turn-europe-against-america-11600013768> [<https://perma.cc/7X6Z-EKWW>] (arguing that China may be able to win Europe over because the U.S. "has not been able to convince Europeans to see Beijing as anything more dangerous than an economic problem set"). Also note that the U.S. has also had difficulty getting European Countries to support the imposition of sanctions on other countries like Iran this year. Adam Payne, *Mike Pompeo Accused European Allies of 'Siding with the Ayatollahs' After They Refused to Back Trump on Iran*, BUS. INSIDER (Aug. 21, 2020, 7:00 AM), <https://www.businessinsider.com/donald-trump-mike-pompeo-accuses-european-allies-iran-ayatollahs-2020-8> [<https://perma.cc/95AA-QRK9>].

255. ROSENBERG ET AL., *supra* note 1, at 13.

256. ROSENBERG ET AL., *supra* note 1, at 36.

257. ROSENBERG ET AL., *supra* note 1, at 13 ("Russian president Vladimir Putin called upon the other leaders from the BRICS [Brazil, Russia, India, China, South Africa] grouping of developing economies to develop 'a system of measures that would help prevent the harassment of countries that do not agree with some foreign policy decisions made by the U.S. and their allies.'").

258. Andrew Chatzky & James McBride, *China's Massive Belt and Road Initiative*, COUNCIL ON FOREIGN RELATIONS (Jan. 28, 2020), <https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative> [<https://perma.cc/T3HN-HKBG>] ("For Xi, the [Belt and Road Initiative] serves as pushback against the much-touted U.S. 'pivot to Asia,' as well as a way for China to develop new investment opportunities, cultivate export markets, and boost Chinese incomes and domestic consumption. 'Under Xi, China now actively seeks to shape international norms and institutions and forcefully asserts its presence on the global stage.'").

259. THOMAS LUM ET AL., CONG. RES. SERV., R40361, CHINA'S FOREIGN AID ACTIVITIES IN AFRICA, LATIN AMERICA, AND SOUTHEAST ASIA (Feb. 25, 2009), <https://fas.org/sfp/crs/row/R40361.pdf> [<https://perma.cc/G7CT-Q96B>]; Matt Ferchen, *How China is Reshaping International Development*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Jan. 8, 2020), <https://carnegieendowment.org/2020/01/08/how-china-is-reshaping-international-development-pub-80703> [<https://perma.cc/6AZ8-93PL>].

260. Copeland & DeRose, *supra* note 200.

sanctions.²⁶¹ In addition, the U.S. sanctions have the potential to impact almost every non-western region, especially as its list of sanctioned individuals grows.²⁶² Simultaneously, China continues to finance and strengthen international relations with countries that the U.S. has historically shunned.²⁶³ Further, by continuing to target China through policies such as the HKAA, China may interpret sanctions actions to mean that the U.S. does not consider the Chinese economy to be on an equal playing field, which ultimately could affect the U.S.' bargaining power in foreign policy and restrict access to China as it emerges as a new center of the global economy.²⁶⁴

V. CONCLUSIONS

Ultimately, the threat to freedom of speech and civil liberties in Hong Kong is concerning.²⁶⁵ However, the U.S. legislative and executive branches' quick and haphazard response to a geopolitical phenomenon stemmed from the fear of an ideological position and did not consider the long-term impacts on the U.S. financial sector in a globalized economy.²⁶⁶ While the short-term impacts of the HKAA alone are still emerging, the continued disconnect between U.S. legislators and investors regarding foreign policy towards China could undermine the

261. *Id.*

262. See *Specially Designated Nationals and Blocked Persons List*, OFF. OF FOREIGN ASSETS CONTROL (Sept. 24, 2020), <https://www.treasury.gov/ofac/downloads/sdnlist.pdf> [<https://perma.cc/69FG-NLV9>] (noting there are thousands of individuals on the SDN list across multiple countries).

263. Between 2000 and 2014, the U.S. and China were almost equal in government financing to other countries—including loans for infrastructure development and other projects. China is estimated to have provided \$354 billion and the U.S. at \$370 billion; many of the countries which China has funded have been deemed threats to the United States and have been sanctioned by the United States in the past. McCullough, *supra* note 197.

264. McCullough, *supra* note 197 (quoting Samantha Custer, Director of AidData's Policy Analysis; "If we don't create space for an emerging China to be at the table as an equal player, then they will continue to work around prevailing international rules with limited transparency").

265. See SUSAN V. LAWRENCE AND MICHAEL F. MARTIN, CONG. RES. SERV., R46473, CHINA'S NATIONAL SECURITY LAW FOR HONG KONG: ISSUES FOR CONGRESS 1 (2020) (discussing the reasoning behind the United States' concern regarding the HKSAR Security Law and the threat to the freedom of speech in Hong Kong).

266. Regarding the "quick and haphazard response of the U.S. government," See 116 CONG. REC. S4179 (daily ed. July 2, 2020) (statement of Sen. Boozman); see also ROSENBERG ET AL., *supra* note 1, at 34 (discussing the role of financial institutions and potential impacts to the U.S. economy as a result of the sanctions).

U.S. position as a financial powerhouse in the twenty-first century.²⁶⁷ Thus, rather than relying on the U.S. markets and dollar as its bargaining token, the U.S. should consider improving multilateral trade initiatives and improving engagement with China before it self-isolates from some of the most lucrative investments in the world.²⁶⁸

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267. See Rennemo, *supra* note 14 (regarding using sanctions and coercive diplomacy, the U.S. risks high political costs, losing allies, and economic risks when taking on China).

268. See Woetzel et al., *supra* note 16, at 132 (“More engagement with China could offer opportunities to rapidly commercialize technologies especially in emerging areas such as A.I. by gaining access to China’s large user base and vast digital ecosystem, both of which are expanding rapidly.”).

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